



Public Employees for Environmental Responsibility

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May 15, 2018

Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street (3CG00)
Philadelphia, PA 19103

RE: FOIA REQUEST

To whom it may concern:

In the summer of 2017, the National Park Service (NPS) reported an illegal asbestos removal operation at Manassas National Battlefield. This report found its way to the U.S. Environmental Protection Agency (EPA) Criminal Investigation Division (CID). NPS officials reported to CID that a park maintenance supervisor had used Youth Conservation Corps enrollees without supplying them any personal protective gear to remove asbestos-laden floor tiling. The resulting debris was then improperly disposed of in a park dumpster.

During the ensuing months, no apparent EPA enforcement action has emerged.

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information concerning this case. Specifically, we request the following:

1. The CID investigative case file concerning the above-described incident;
2. Documents reflecting the ultimate disposition of the case as well the official rationale for that disposition;
3. Copies of any communications between EPA and NPS not included in the case file; and
4. Records reflecting any non-enforcement actions EPA took concerning this matter, including alerting the Youth Conservation Corps enrollees of their likely exposure to friable asbestos fibers and/or arranging for the proper disposal of the asbestos-laden debris.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material would help the public understand how EPA recently handled serious pollution violations which carried significant risks to public health.

The request would also allow the public to understand whether the current EPA administration is adhering to agency enforcement policies or has changed enforcement priorities.

As these topics are the explicit focus of this request, the requested material is directly informative in relation to the request.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested material concerns the rigor of federal anti-pollution enforcement against a federal agency engaged in egregious and dangerous misconduct. In this regard, the records would reveal how CID and EPA prioritize use of their limited enforcement resources. The public also has a keen interest in whether EPA enforcement efforts have slackened in recent months due to lack of resources.

The public at large is also interested in malfeasance by government agencies or officials, particularly as it effects the public health and the environment. The records could allow the public to see if pollution violations by federal officials are treated the same way as those by private individuals.

In addition, the information may shed light on the public health risks to recent visitors to the Manassas National Battlefield and, perhaps, national parks at large.

PEER intends to provide the requested information to the public at large through —

- Release to the news media;
- Posting on the PEER website that draws between 1,000 and 10,000 viewers per day; and

- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

PEER has a long history of attracting media and public attention to the internal workings of EPA, including its enforcement efforts.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

The requested material would reveal the facts of the case and the rationale for why it was resolved in the manner that it was. This material is not publicly posted by EPA.

The requested materials also would allow the public to look directly into the mechanics of an enforcement action in a case involving a sister federal agency. The requested information would allow the public to see if these reported violations were properly handled or improperly brushed under the rug.

In short, the nature of the information should shed also some direct light on the quality, strength and extent of anti-pollution enforcement inside EPA in a matter in which serious threats to public health are at stake.

5. The extent to which disclosure will serve the requestor’s commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation’s resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor’s commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation’s resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency’s final response within 20 working days.

Cordially,

Jeff Ruch
Executive Director